

Remarks of Marshall Gratz to Lurie Awards gathering  
September 27, 2004 – Hefter Conference Center – UW-Milwaukee

Thank you Dean Prasad and thank you Byron Yaffe. Dean Meadows, Prof. Heywood, ladies and gentlemen. I am deeply honored to receive this award. It means a great deal to me to be recognized this way, to be included among the distinguished group of past recipients, to be honored at my undergraduate alma mater and in part by the Economics department in which I majored, and to receive an award given in memory of my former professor Melvin Lurie and in the presence of Lois Lurie and other members of the Lurie family.

I have been asked to spend 20 minutes or so trying to explain how I've been able to accomplish the achievements for which I'm being honored. I want to talk about the contributions of my family, my education, and my early WERC work experiences, and then I want to share some lessons I've learned and rewards I've found in working as a neutral in labor disputes.

## FAMILY

I grew up in a family that made studying hard about labor relations a natural thing to do.

My mother was the youngest of seven children in a rural Wisconsin family. She and her four sisters all taught public school after earning degrees from UWM long before it was called a university. So in our family, working hard at school was a way of life.

So was labor relations. My father, George Gratz, was an attorney who represented working people and unions, including the Machinists, for many years. He died when I was only three, but his younger brother Robert had joined him in the practice and he ably carried it on and later joined what is now the Previant Goldberg Uelmen firm. Uncle Bob was a widely respected practitioner (often referred to as a "prince" to work with by veteran arbitrators I've known over the years), and he was a significant role model for me.

My wife Rene (who is beginning her 27<sup>th</sup> year of teaching health sciences here at UWM) and our two sons (Joe and Eli) have also contributed significantly to any success I have enjoyed in my work. Careers in labor relations can be very hard on a marriage and on children. Night meetings, long hearings, out-of-town travel, frequent schedule changes and fatigue are some of the factors contributing to a high divorce rate and various stress-related illnesses in our labor-management community. My family's flexibility and understanding have made it possible to do my job happily and healthfully. I should also add that over the years our son Joe taught me most of what I know about the Internet and web publishing, enabling me to develop the WERC website.

## EDUCATION

When I was a UWM undergraduate, I chose Economics as my major after taking the excellent survey course then taught by Leon Applebaum. I especially enjoyed the labor economics courses offered by Professor Lurie. He was a mild-mannered and scholarly person. As a New Englander, he called me Maaa-shall. He taught us the practical aspects of labor economics along

with the theoretical, and we often heard about and sometimes met in class with local practitioners from the FMCS and the NLRB.

My UWM grades and leadership activities earned me law school admission at Wisconsin and Harvard. (I'm still on the waiting list at Yale, as far as I know.) I chose Harvard even though it meant I would have to take a lifetime of heckling from UW and Marquette Law graduates whose diplomas exempt them from the bar exam that I would have to take to practice here.

In law school, I took labor law from Archibald Cox and I wrote a third year paper on "The Impact of Collective Bargaining on Labor Management Cooperation" for Dean Derek Bok while he was in the process of being named president of the University. I cross-registered in labor relations courses at the Graduate School of Business taught by Thomas Kennedy and James Healy. Both were outstanding teachers with active national labor arbitration practices. They cemented my interest in labor relations law as a career and enhanced my familiarity with and respect for those who serve labor and management as neutrals in dispute resolution.

## EARLY WORK EXPERIENCES

After graduation, I returned to Wisconsin, somehow passed the bar exam, and was fortunate that WERC had professional staff openings arising out of the 1971 passage of comprehensive municipal and state collective bargaining legislation. I was interviewed by agency Chairman Morris Slavney and Commissioners Zel Rice and Joseph Kerkman. They hired Stanley Michelstetter and me to work in what was then the agency's Milwaukee office in the State Office Building downtown, and Stan and I learned the business there together for many rewarding years.

The WERC professional staff job then and now is a unique opportunity to develop as a labor relations professional. While most of the agency's work involves the municipal sector, we also administer private sector and state sector laws. Under all three laws our agency mediates contract and grievance disputes, adjudicates unfair labor practice, representation and other disputes, and arbitrates grievances under existing contracts. More recently, led by Henry Hempe, Ed Bielarczyk and Dennis McGilligan, we have also offered labor management cooperation training and facilitation services. And the most recent State budget added personnel appeals to our responsibilities at the same time that it cut our staff and our tax-dollar support.

From the day I started with WERC, I was trained both formally and informally by a highly-talented, motivated and nationally-respected group of Commissioners and staff members. In my early years I learned from the commissioners that hired me and from the likes of Howard Bellman, George Fleischli, Donald Lee, and Herman Torosian.

I also learned a great deal from encounters in hearings, negotiations and professional organization activities with the highly-sophisticated labor relations community of attorneys, union and management representatives and neutrals that we are blessed with in Wisconsin. The quality of the labor relations professionals in our state is truly exceptional, making this an excellent environment in which to work and learn.

I learned a great deal from Ron Sweet, Bill Kurtz and Frank Fiore at the FMCS, as well as from colleagues at the NLRB, US Department of Labor, UW-Madison, UW-Milwaukee, Marquette and elsewhere. I fondly recall having had the opportunity to represent WERC during the planning and implementation of the first state-wide labor management cooperation conference because it gave me an opportunity to work closely with Mel Lurie on that landmark project.

As Dean Prasad noted, I was appointed as a WERC commissioner on two occasions sandwiched around three years of full-time private arbitration practice. Remarkably, both of the Governors, Schreiber and Earl, who appointed me to the WERC did so early in their terms and each was later unexpectedly defeated for reelection. I've always chalked that up to coincidence, but you can never be sure about cause and effect in politics.

## LESSONS LEARNED AND APPLIED

Here is a list of ten lessons I have learned about how to try to promote effective labor-management relationships as a neutral in dispute resolution, that I try to apply day in and day out.

First, the best outcome is one the parties agree on rather than one imposed by a third party. Morrie Slavney instilled that philosophy in a generation of neutrals because in most cases – whether they involve grievances, contract negotiations or statutory disputes -- a settlement can more flexibly fulfill the parties' respective interests than a decision or award by an outsider can hope to do.

Second, when a decision is necessary, call 'em as you see 'em. The wisdom passed down to me has been to decide every case on its merits, as if it is the last one you will ever issue. The outcome must not be influenced by who won or lost the last case or by which party or advocate is more prominent, emotional or vindictive. WERC lore has it that the first ten awards Don Lee issued all went the same way; he just called em as he saw them and earned the parties' respect for doing so.

Third, patience, timing and creativity are very important. A proposal or concept that becomes acceptable to both sides at the right time is often something that one or both sides would reject at a different point in the process. Once the neutral has an opportunity to learn both parties' concerns and priorities, there is sometimes an opportunity to float creative alternatives for the parties' consideration. I made my first mediator's suggestion while observing Howard Bellman mediating a UW-Madison strike among food service and residence hall workers shortly after I was hired. I mostly just observed, but when the parties were searching for a phrase to describe the amount of an employee's accrued seniority, I couldn't help myself and I suggested "quantum of seniority." Everyone involved politely told me that my suggestion was novel but not ideal, and the strike newsletter later reported that the case was being mediated by "Howard the Good and Marshall of the Quantums."

Fourth, try to leave everyone involved in a hearing satisfied that they were treated with respect, that they received a fair hearing and that their arguments were understood even if they did not prevail. George Fleischli has epitomized those values both as a WERC employee and as a

private practice arbitrator. So much so that he has served as Ethics Committee Chair of the National Academy of Arbitrators and is currently the Academy president, reflecting very well on labor arbitration and labor arbitrators in Wisconsin.

Fifth, do the right thing even if it's not the easiest way out. Integrity and the courage to adhere to it are critically important and go a long way in our business.

Sixth, you can't help the parties if you don't make yourself available when they need you.

Providing good service in terms of scheduling availability, willingness to work through lunch or dinner or into the wee hours, and sometimes driving through bad weather all can help the parties to find a voluntary agreement when the conditions are ripe for doing so. Zel Rice used to say, "If the weather slows you down, just keep going 'til you get there; they can't start without you."

Seventh, humor can be helpful. Used timely and tastefully, it can relieve tension, promote settlement possibilities or help make a hearing or negotiation a less antagonistic experience. In a high stakes police mediation many years ago, the command staff and the rank and file officers were all required to carry their guns at all times, including at bargaining sessions. I was present in one party's caucus room when an argument got so heated that one of the officers went nose to nose with his own chief negotiator and actually put his hand on his holster. Trying to appear unconcerned, I asked (in a loud but uncontrollably squeaky voice) if someone would pass me a sweet roll. That generated a few chuckles around the room and seemed to defuse things enough for calmer heads to prevail. I was later assured that if I was ever in a similar situation that escalated any further, I'd probably be just fine if I laid flat on the floor until things quieted down. Happily, I've never had to test that advice.

Eighth, where possible, pursue settlement with both a stick and a carrot. In almost all of our cases the "stick" does not involve the threat of a strike or lockout, but rather the expense, risk, delays and headaches inherent in arbitrating or litigating. The "carrot," in the form of a set of possible settlement terms can sometimes be made attractive enough to warrant both parties' serious consideration as an alternative to that stick.

Ninth, the parties' trust can only be earned gradually, but it can be lost quickly. The parties' confidence in the neutral's fairness and judgment are critically important in all types of dispute resolution. Joe Kerkman was able to develop and maintain exceptional trust and confidence among the parties. Then when Joe would move his glasses up to his forehead and talk turkey to them, they ordinarily paid close attention and moved in a helpful direction. As a mediator, I try when I can to be both parties' "Dutch uncle," a person who understands and cares about the things that matter to each party, but who sometimes cares enough to suggest ways they might better pursue their underlying objectives in light of the realities they are facing.

Tenth, and finally, it is important to recognize that some disputes cannot be resolved voluntarily or quietly or quickly no matter how skillfully or carefully they are handled by the neutral. Like the time during a sewage treatment plant strike when the local police had to break up a contract ratification meeting to prevent the union hall from being set on fire by frustrated employees. The workers had been on strike for several days, and everyone involved – including the US Environmental Protection Agency – placed a high value on minimizing the time needed for

settlement and ratification of an agreement. So when we got close to a deal, we arranged for radio news announcements and fliers calling the strikers to a ratification meeting about what the parties and I were SURE would be a tentative agreement by the time the employees gathered. (In retrospect, not a good idea.) The employees waited several hours at the hall (and the neighborhood tavern) for the settlement terms to be finalized, and the mood turned understandably ugly when they came back to the hall and learned that no settlement would be coming that day at all because a major glitch that we could not promptly overcome had surfaced when we reviewed the settlement terms in detail one last time back at the hotel at the end of a 36 hour meeting. The police were called when the strikers began burning their meeting notices, and understandably the union found it necessary to up the ante when we got back to the table because the employees were so enflamed by the ratification meeting experience (no pun intended). Byron was my supervisor at the time and I really appreciated his coming to Milwaukee in person a day or so later to help me think through how to regroup from that disaster.

I continue to learn lessons from my experiences in the field and to beneficially rely on my WERC colleagues for advice and assistance. Several members of our Commission and staff are here with us tonight. It is my privilege to work with them, and I very much appreciate their joining us for this occasion.

A former WERC staff colleague that several of us were privileged to work with, Jane Buffett, passed away over the weekend. She was one of the kindest, most understanding people I've ever known and she will be long remembered and missed.

## SOURCES OF SATISFACTION

In closing, let me briefly identify some of the satisfactions that working as a neutral can provide, in addition to working with excellent parties and co-workers.

Achieving mediated settlements can be very satisfying. So can issuing a decision or award that feels right when it's issued and that either is not challenged by anyone or is affirmed by the Commission or the courts if it is challenged.

I have also found satisfaction from things like:

- Joint Union-Employer requests that WERC assign to mediate or arbitrate a particular dispute.

- Or advocates commenting that they appreciate the fact that I don't make them or their clients look bad even when I don't rule in their favor.

- Or parties saying at the end of a successful mediation that they didn't think a settlement was possible or that they couldn't have done it without my help.

My mother used to call feedback like that "music to the ears." Tonight I am adding something else that will always be "music to my ears": "Marshall Gratz is a Lurie award recipient."

Thank you all very much.